



**2015 IDAHO BENCH BAR CONFERENCE PROGRAM
2015 DISTRICT COURT BENCH BAR PROGRAM**

Date: 30 October 2015
Boise Centre on the Grove
Boise, Idaho

8:30 a.m. Registration and Continental Breakfast
Falcon Room

9:00 a.m. Welcome
Summit Room

[Chief U.S. Magistrate Judge Ronald E. Bush](#)

9:10 a.m. State of the Judiciary-Joint Session
Summit Room

[Chief U.S. District Judge B. Lynn Winmill](#)

[Chief U.S. Bankruptcy Judge Terry L. Myers](#)

[Ninth Circuit Court of Appeals Judge N.R. Smith](#)

10:00 a.m. Morning Break

10:15 a.m. Plenary Session
Summit Room

Keynote Speaker: [Philip Howard](#), Senior Counsel - Covington & Burling (New York City)

A well-known leader of government and legal reform in America, Philip Howard is the head of "Common Good" and the author of "The Death of Common Sense," "The Collapse of the Common Good," "Life Without Lawyers" and, most recently, "The Rule of Nobody" (<http://www.commongood.org/pages/philip-k.-howard>). He writes periodically for the Wall Street Journal, the Washington Post and the New York Times, and has appeared on The Daily Show with Jon Stewart, the News Hour, Today, Good Morning America, Charlie Rose, and numerous other programs. Mr. Howard will present his views on the need for government to be radically simplified so as to restore the ability of officials and citizens alike to use common sense when advancing public goals. Following his remarks, he will be joined by a panel representing the judiciary, the practicing bar, policymakers and the business world to discuss real-life examples of regulatory form versus substance, and the potential for reform.

12:00 p.m. Lunch
FBA presentation/awards

1:00 p.m. Break-out Sessions

Employment - [Howard Burnett](#) - moderator
Room TBD

An Employment Law Update for Litigators

DeAnne Casperson, Holden, Kidwell, Hahn & Crapo, PLLC
Steve Berenter, Hawley Troxell Ennis & Hawley, LLP

The panel members will address – from both an employer’s and an employee’s perspective – the latest “hot” issues giving rise to employment-related litigation in federal court. Topics will include legal concepts that increasingly are the subject of litigation under the anti-discrimination statutes, the Family and Medical Leave Act and the Fair Labor Standards Act. Recent employment-related decisions by the United States Supreme Court – including *EEOC v. Abercrombie & Fitch Stores, Inc.* (religious discrimination claims under Title VII), *Young v. United Parcel Service, Inc.* (claims under the Pregnancy Discrimination Act), *University of Texas Southwestern Medical Center v. Nassar* and *Thompson v. North American Stainless, LP* (retaliation claims under Title VII), *Vance v. Ball State University* (liability issues under Title VII), and *Kasten v. Saint-Gobain Performance Plastics Corp.* (retaliation claims under the Fair Labor Standards Act) – will be discussed. In addition, panel members will address recent developments emanating from administrative agencies such as the Equal Employment Opportunity Commission, the Department of Labor and the National Labor Relations Board that may result in employment-related disputes.

Environmental Law - [Walt Sinclair](#) - moderator
Room TBD

A. Evolving standards of judicial deference to federal agency rules, interpretations, guidance, and decision making.

Professor Stephen Miller, University of Idaho College of Law, Boise

On March 9, the U.S. Supreme Court held that federal agencies may change an interpretation of their own regulations without using Administrative Procedure Act (APA) notice-and-comment procedures if those procedures were not used in the initial interpretation. *Perez v. Mortgage Bankers Association*, 135 S. Ct. 1199 (U.S. 2015). This topic will explore the evolution and application of the judicial standards for deference to various types of agency decision making and their application to environmental law cases.

B. Expert and Live Witness Testimony in Administrative Record cases

[William Meyers](#), moderator

Panelists:

[Laird Lucas](#), Advocates for the West

[Deborah Ferguson](#), Ferguson Durham, PLLC

The general rule for APA-based claims under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), National Forest Management Act, and other federal environmental and resources statutes is that judicial review is limited to the administrative record before the agency at the time of its decision. But in a number of instances, including preliminary injunctions, the remedy phase, standing, and recognized extra-record exceptions, either live or written testimony may be presented. This topic surveys the general rule and the instances when such testimony may be proper, and provide practical tips for practitioners and the court.

Criminal - [Lori Nakoaka](#) - moderator
Room TBD

What Happens to Defendants after Sentencing?

[Jeffery Thomason](#), Chief U.S. Probation Officer for the District of Idaho
David Merchant, Assistant Federal Defender for the Montana Federal Defender's and former legal intern for the Federal Bureau of Prisons (BOP)

Presenters Jeffrey Thomason, Chief U.S. Probation Officer for the District of Idaho, and David Merchant, Assistant Federal Defender for the Montana Federal Defender's and former legal intern for the Federal Bureau of Prisons, will address how the BOP classifies inmates, what this means in how the inmates will serve their sentences, and how the inmates are transitioned back into society when their sentences are fulfilled. Mr. Merchant will discuss the nuances of BOP's security classification, what attorneys and judges can do to influence this classification, and offer insights on what inmates actually experience in the federal prison system as a result of this classification. Mr. Thomason will discuss how U.S. Probation anticipates an inmate's release and puts together a plan for supervised release, the use of risk assessment tools in case planning and resource delivery, current recidivism rate trends, and how technology and changing demographics are influencing the manner in which U.S. Probation supervises individuals on release. Both presenters will discuss the impact of Amendment 782 to the Drug Quantity table on the supervised release population and how the BOP and U.S. Probation are addressing these changes.

2:00
a.m. Break

2:15
p.m. Plenary Session
Summit Room

"The Rules are a Changin'" – discussion about changes to Federal Rule of Evidence 801, Federal Rule of Civil Procedure 45, Local Rules 15.1, 27.1, 27.1 and 47.2, and proposed revisions to Federal Rule of Civil Procedure 26 (to become effective December 1, 2015) and comments regarding "restoring proportionality" to the scope of discovery.

[U.S. Magistrate Judge Candy W. Dale](#)
[Jason Prince](#)
[John R. Kormanik](#)

3:30
p.m. Afternoon Break

4:00
p.m. Judges' Panel – Tips from the Bench and Questions and Answers
Summit Room

The Judges' Panel will be moderated by xxx. This always lively session brings a judicial perspective to questions of substance and procedure in the practice of law before the District Court and Bankruptcy Court of the District of Idaho as well as the 9th Circuit Court of Appeals

5:15
p.m. Closing Remarks – Adjourn